No. 18-389

In the Supreme Court of the United States

PARKER DRILLING MANAGEMENT SERVICES, LTD.,
PETITIONER

v.

BRIAN NEWTON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, extends federal law to the Outer Continental Shelf (OCS) "to the same extent as if the [OCS] were" a federal enclave, 43 U.S.C. 1333(a)(1). The laws of the adjacent State are "declared to be" federal law to "the extent that they are applicable and not inconsistent with" other federal law. 43 U.S.C. 1333(a)(2)(A). The question presented is whether California wage-and-hour law is "applicable and not inconsistent" with federal wage-and-hour law and therefore "declared to be" federal law on a drilling platform attached to the OCS off the coast of California.

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INTEREST OF THE UNITED STATES

The question presented in this case is whether California law prescribing minimum-wage and overtime-pay requirements for employees is incorporated as federal law by the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, to govern employment on a drilling platform attached to the Outer Continental Shelf (OCS) off the coast of California. OCSLA places the OCS within the exclusive jurisdiction and control of the United States. 43 U.S.C. 1332(1). The United States accordingly has a substantial interest in the resolution of the question presented.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-10a.

STATEMENT

1. The Continental Shelf extends "under the waters of the ocean to the point where the continental slope leading to the true ocean bottom begins." S. Rep. No. 411, 83d Cong., 1st Sess. 4 (1953) (Senate Report). Off the coast of New England, the Shelf "extends seaward about 250 miles." *Ibid.* In the Gulf of Mexico, it "ranges in width from about 40 to about 100 miles." *Ibid.* Along the Pacific Coast, the Shelf "is relatively narrow, ranging in width from 5 miles or less to a maximum of about 40 miles." *Ibid.*

The Continental Shelf "promises enormous riches." Warren M. Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 Stan. L. Rev. 23, 25 (1953) (Christopher). Among other resources, the Shelf is "thought to contain every major mineral, some in large quantities." *Ibid.* Partly for that reason, coastal States and the federal government long disputed "the right to lease the submerged lands for oil and gas exploration." *Shell Oil Co.* v. *Iowa Dep't of Revenue*, 488 U.S. 19, 26 (1988). In a series of decisions beginning with *United States* v. *California*, 332 U.S. 19 (1947), this Court determined that the United States has exclusive jurisdiction over the Shelf and the mineral deposits therein. *Id.* at 38-39; see *United States* v. *Texas*, 339 U.S. 707, 717-718 (1950); *United States* v. *Louisiana*, 339 U.S. 699, 705 (1950).

In 1953, Congress responded to those decisions by striking a compromise. In the Submerged Lands Act (SLA), 43 U.S.C. 1301 *et seq.*, Congress ceded to the States offshore lands within three nautical miles (or, for Texas and Florida on the Gulf of Mexico, three marine leagues) of their coast, while providing exclusive federal jurisdiction and control over the rest of the Continental

Shelf, 43 U.S.C. 1301-1302, 1311-1312. The exclusively federal portion, known as the Outer Continental Shelf (OCS), "comprises about nine-tenths of the area of the entire Continental Shelf," and spans "some 261,000 square miles * * * , an area almost one-tenth that of the continental United States." Christopher 23, 25.

Later in 1953, Congress passed and President Eisenhower signed the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.* OCSLA defines the OCS to include "all submerged lands" between the lands reserved to the States by the SLA and the edge of the United States' territorial jurisdiction. 43 U.S.C. 1331(a). OCSLA declares that "the subsoil and seabed of the [OCS] appertain to the United States and are subject to its jurisdiction, control, and power of disposition." 43 U.S.C. 1332(1). OCSLA then sets forth a variety of provisions regulating leasing, exploration, and other mechanisms "for the orderly development of offshore resources." *United States* v. *Maine*, 420 U.S. 515, 527 (1975); see 43 U.S.C. 1334-1354.

Of central importance here, OCSLA "define[s] a body of law applicable to the seabed, the subsoil, and the fixed structures such as [drilling platforms]" attached to the OCS. *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 355 (1969). First, in 43 U.S.C. 1333(a)(1), OCSLA extends "[t]he Constitution and laws and civil and political jurisdiction of the United States" to the "subsoil and seabed" of the OCS, as well as to "all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed." Section 1333(a)(1) provides that such federal law shall apply "to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State," *i.e.*, a federal enclave. *Ibid.*; see *Rodrigue*, 395 U.S. at 355.

Section 1333(a)(2)(A) then provides that "[t]o the extent that they are applicable and not inconsistent with" federal law, "the civil and criminal laws of each adjacent State * * * are declared to be the law of the United States for that portion of the" OCS "which would be within the area of the State if its boundaries were extended seaward to the outer margin of the [OCS]." 43 U.S.C. 1333(a)(2)(A). Section 1333(a)(2)(A) provides that "[a]ll of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States," and that "State taxation laws shall not apply to the outer Continental Shelf." *Ibid.* Section 1333(a)(3) adds that the "adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the" OCS. 43 U.S.C. 1333(a)(3).

2. From January 2013 to January 2015, respondent worked for petitioner on drilling platforms attached to the OCS in the Santa Barbara Channel. Pet. App. 2-3. As is standard for employees on such platforms, respondent worked 14-day shifts, referred to as "hitches." *Id.* at 3. During shifts, respondent spent 12 hours per day on duty, for which he was paid "well above" the state and federal minimum wage. *Id.* at 3, 20. He spent the other 12 hours per day on "controlled standby," during which "he was not able to leave the platform." *Id.* at 3. He was not paid for that standby time. *Id.* at 47.

In February 2015, respondent filed a putative class action in California state court alleging violations of several state wage-and-hour laws, as well as associated state-law violations. Pet. App. 3. Among other things, respondent claimed that California's minimum-wage

and overtime statutes and accompanying administrative orders required petitioner to compensate him for the 12 hours he spent on controlled standby. *Ibid.*

3. Petitioner removed the action to a federal district court, which granted judgment on the pleadings to petitioner. Pet. App. 3-4. The court explained that, under OCSLA, "the law to be applied * * * is exclusively federal," but "the law of an adjacent state may be adopted as the law of the United States to the extent that [it] is 'applicable and not inconsistent' with" existing federal law. *Id.* at 51 (quoting 43 U.S.C. 1333(a)(2)(A)). The court further explained that "state law is only 'applicable' to the extent that federal law, because of its limited function in a federal system and inadequacy to cope with the full range of potential legal problems, has a significant void or gap." *Ibid.* (citing *Rodrigue*, 395 U.S. at 357). Thus, the court determined, "under OCSLA, federal law governs and state law only applies to the extent it is necessary 'to fill a significant void or gap' in federal law." *Ibid.* (quoting *Continental Oil Co.* v. *London Steam-Ship Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969), cert. denied, 397 U.S. 911 (1970)).

Turning to respondent's claims, the district court concluded that the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, constitutes a "comprehensive [federal] scheme providing for minimum wages and overtime pay." Pet. App. 55 (citation omitted). Because the FLSA has no "'significant voids or gaps'" that need to be filled by state law, the court explained that "it is not necessary to apply the law of the 'adjacent state'" under OCSLA. *Ibid.*; see *id.* at 52-59. The court granted judgment to petitioner on respondent's claims, all of which were based on California law. *Id.* at 60.

4. The court of appeals reversed. Pet. App. 1-41. The court rejected the district court's conclusion that a "significant void or gap" in federal law is required before state law can be applied as federal law under OCSLA. *Id.* at 2 (quoting *Continental Oil*, 417 F.2d at 1036). Instead, the Ninth Circuit determined that state law is "'applicable'" under OCSLA whenever it "pertain[s] to the subject matter at hand." *Id.* at 21. The court acknowledged that its reading of "applicable" conflicted with the Fifth Circuit's decision in *Continental Oil* and the decision of every district court within the Ninth Circuit that had addressed the issue. *Id.* at 2, 20 n.13 (citation omitted).

Having concluded that California wage-and-hour law was "'applicable'" under OCSLA, the court of appeals turned to whether California law was "'inconsistent with' existing federal law." Pet. App. 27 (quoting 43 U.S.C. 1333(a)(2)(A)). The court reasoned that state laws are "inconsistent" with federal law under OCSLA only "if they are mutually incompatible, incongruous, or inharmonious." *Id.* at 28 (citation and internal quotation marks omitted). Under that standard, the court determined that no inconsistency exists between the FLSA and California wage-and-hour law, because the FLSA savings clause "explicitly permits more protective state wage and hour laws." *Id.* at 36. The court accordingly held that California law applied and remanded for further proceedings on respondent's minimum-wage and overtime claims. *Id.* at 39.[1]

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[1] The court of appeals directed the district court to consider in the first instance whether respondent's other claims were inconsistent with federal law. Pet. App. 40. The court of appeals also reserved for the district court on remand "the question whether [its] holding should be applied retrospectively." *Id.* at 43.

SUMMARY OF ARGUMENT

In OCSLA, Congress extends federal law to the OCS "to the same extent as if the [OCS] were" a federal enclave, 43 U.S.C. 1333(a)(1), and adopts state law as federal law to the extent it is "applicable and not inconsistent with" existing federal law, 43 U.S.C. 1333(a)(2)(A). The FLSA extends to the OCS and prescribes minimum-wage, overtime, and maximum-hour standards that directly address respondent's claims. That resolves this case. Because the FLSA supplies the "applicable" federal law, California law cannot. And even if California law were "applicable" in some sense, it would not be adopted as federal law under OCSLA because it is "inconsistent" with the FLSA.

A. Under OCSLA, only federal law applies on the OCS. That law comes, first and foremost, from the "Constitution and laws * * * of the United States," including the FLSA. 43 U.S.C. 1333(a)(1). Because federal law does not address every possible issue that could arise on the OCS, however, OCSLA borrows "applicable" and "not inconsistent" state law. 43 U.S.C. 1333(a)(2)(A). But just as in federal enclaves—the jurisdictional model OCSLA expressly adopts—state law is "applicable" only if federal law leaves a gap to fill. Here, there is no gap. Because the FLSA prescribes standards that govern respondent's claims, the FLSA provides the only "applicable" federal law.

The text, structure, history, and purpose of OCSLA all reinforce that reading. The term "applicable," while capable of various definitions in isolation, takes its meaning in OCSLA from the well-established law governing federal enclaves, under which state law applies only when federal law leaves a gap. This Court's deci-

sions construing OCSLA, along with the most significant aspects of its legislative history, similarly indicate that state law applies only when federal law does not. That important but secondary role also follows from OCSLA's overriding purpose—to make federal law "'exclusive' in its regulation of" the OCS, with state law "adopted only as surrogate federal law." *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 357 (1969).

B. Even if California wage-and-hour law were "applicable" in some sense, OCSLA would not adopt it as federal law because it is "inconsistent with" the FLSA. 43 U.S.C. 1333(a)(2)(A). Under established principles of federal-enclave law, state law that is inconsistent with federal law or policy is not assimilated. Such inconsistency is most apparent when adopting state law would effectively revise standards prescribed by federal law. That is what respondent seeks to do here, by imposing wage-and-hour standards that differ from those prescribed by the FLSA.

To be sure, the FLSA contains a savings clause that requires employers to comply with laws that provide greater protections for employees. The FLSA would accordingly not preempt California law if this case arose under state jurisdiction on the mainland. But preemption principles are irrelevant under OCSLA, because state law never applies of its own force on the OCS. Under OCLSA, the only question is whether California law is "declared to be" federal law. 43 U.S.C. 1333(a)(2)(A). Because California's minimum-wage and maximum-hours standards are "inconsistent with" those prescribed by the FLSA, the answer is no. *Ibid.*

C. The decision below departs from the Fifth Circuit's position for half a century that OCSLA adopts state law on the OCS only to fill gaps in federal law.

Subjecting OCS employers to the wage-and-hour requirements of various adjacent States would disrupt settled expectations and require substantial changes to business arrangements. Assimilating new swaths of state law would also multiply the burdens on federal officials charged with "administer[ing]" and "enforc[ing]" all law on the OCS. 43 U.S.C. 1333(a)(2)(A). And the consequences could extend beyond the wage-and-hour laws at issue here. Many other federal statutes, administered by various federal agencies, regulate activity on the OCS. Although many of those statutes indicate that federal law applies exclusively on the OCS, the decision below could provide a rationale to urge the adoption of state regulatory law in disruptive and unpredictable ways—all in conflict with OCSLA's core directive that federal law is paramount on the OCS.

ARGUMENT

THE FAIR LABOR STANDARDS ACT, AND NOT CALIFORNIA WAGE-AND-HOUR LAW, PROVIDES THE ENFORCEABLE FEDERAL LAW ON THE OUTER CONTINENTAL SHELF

OCSLA provides that the "laws * * * of the United States are extended to" the OCS. 43 U.S.C. 1333(a)(1). The FLSA is undisputedly among those laws. California law can serve as federal law on the OCS only if it is "applicable" and "not inconsistent with" the FLSA. 43 U.S.C. 1333(a)(2)(A). The California wage-and-hour law invoked by respondent does not satisfy either of those requirements. It is not "applicable" because the FLSA leaves no gap for state law to fill, and it is "inconsistent with" the FLSA because it would impose different minimum-wage and overtime requirements than Congress directly prescribed. *Ibid.* The decision below should be reversed on either or both of those grounds.

A. California Wage-And-Hour Law Is Not "Applicable" To The OCS Within The Meaning Of 43 U.S.C. 1333(a)(2)(A)

The text and structure of OCSLA, its legislative history and purpose, and this Court's precedent all indicate that state law is "applicable" as federal law on the OCS only "to fill * * * substantial 'gaps' in the coverage of federal law." *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U.S. 473, 480 (1981); see *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 101 (1971); *Rodrigue* v. *Aetna Cas. & Sur. Co.*, 395 U.S. 352, 357-359 (1969). Where laws of the United States apply of their own force, there is no gap to fill and thus no need to adopt "state law * * * as surrogate federal law." *Rodrigue*, 395 U.S. at 357. That is the case here. The FLSA comprehensively regulates wage-and-hour issues and leaves "no gaps" for state law to fill. *Continental Oil Co.* v. *London Steam-Ship Owners' Mut. Ins. Ass'n*, 417 F.2d 1030, 1036 (5th Cir. 1969), cert. denied, 397 U.S. 911 (1970).

1. Under OCSLA, state law is "applicable" only if needed to fill a gap in existing federal law

OCSLA "emphatically" asserts the federal government's "paramount" sovereignty over the OCS. *United States* v. *Maine*, 420 U.S. 515, 526 (1975). OCSLA provides that the United States has exclusive "jurisdiction, control, and power of disposition" over OCS lands, 43 U.S.C. 1332(1), and Section 1333(a)(1) extends the "Constitution and laws * * * of the United States" to the OCS "to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State," 43 U.S.C. 1333(a)(1). Because those federal laws "might be inadequate to cope with the full range of legal problems" arising on the OCS, *Rodrigue*, 395 U.S. at 357, Section 1333(a)(2) provides that "the civil and criminal laws of each adjacent State * * * are declared to

be the law of the United States" on the OCS "[t]o the extent that they are applicable and not inconsistent with" federal law, 43 U.S.C. 1333(a)(2)(A). Thus, "[a]ll law applicable to the [OCS] is federal law," *Gulf Offshore*, 453 U.S. at 480, with "state law * * * adopted only as surrogate federal law," *Rodrigue*, 395 U.S. at 357, and only as specified in Section 1333(a)(2).

a. The text and context of OCSLA establish that state law is "applicable" as federal law on the OCS under Section 1333(a)(2) only when there is a gap in the laws of the United States that are "extended" to the OCS by Section 1333(a)(1). As a matter of ordinary meaning, both at the time of OCSLA's adoption and now, a law is "applicable" if it is "[c]apable of being applied" or "fit, suitable, or right to be applied." *Webster's New International Dictionary of the English Language* 131 (2d ed. 1958) (*Webster's Second*); see *Ransom* v. *FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011) (quoting multiple dictionaries providing the same definition); *Black's Law Dictionary* 120 (10th ed. 2014) (same).

Determining whether a law is "applicable" under that definition requires analyzing the statutory context. See *Shell Oil Co.* v. *Iowa Dep't of Revenue*, 488 U.S. 19, 25 (1988) (explaining, in interpreting Section 1333(a)(2), that "the meaning of words depends on their context"); see also *Ransom*, 562 U.S. at 70-71 (relying on "statutory context" to interpret "'applicable'"); *Department of the Treasury* v. *FLRA*, 494 U.S. 922, 930 (1990) (similar). Here, the critical context for the meaning of "applicable" in Section 1333(a)(2) comes from Section 1333(a)(1), which extends federal law to the OCS "to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State"—*i.e.*, "an upland federal enclave." *Rodrigue*, 395 U.S. at 357.

When Congress enacted Section 1333(a)(1), choice-of-law principles governing federal enclaves were well-established. The Constitution empowers Congress to "exercise exclusive legislation" in federal enclaves, such as military reservations, post offices, and parks. U.S. Const. Art. I, § 8, Cl. 17; see *Jurisdiction over Federal Areas Within the States: Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States*, Pt. I, at 2 (1956) (Federal Study). When a federal enclave is created within a State, any existing state "laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the [federal] government" are "at once displaced." *Chicago, Rock Island & Pac. Ry. Co.* v. *McGlinn*, 114 U.S. 542, 546 (1885). The only state laws that apply as federal law in the new enclave are those "in no respect inconsistent with any law of the United States," and that Congress "never * * * changed or abrogated." *Id.* at 547; see *Paul* v. *United States*, 371 U.S. 245, 269 (1963) (explaining that a preexisting state law is "applicable" in a federal enclave when "there is no conflicting federal policy"). Any state law enacted "after the transfer of sovereignty" is "without application" unless adopted by the federal government. *Pacific Coast Dairy* v. *Department of Agric. of Cal.*, 318 U.S. 285, 294-295 (1943). In sum, state law applies to a federal enclave only to "fill[] a vacuum which would otherwise exist in the absence of" federal law. Federal Study, Pt. II, at 158 (1957).

Against that background, OCSLA's provision that state laws are adopted as federal law "[t]o the extent they are applicable and not inconsistent" with federal law, 43 U.S.C. 1333(a)(2)(A), is best understood to follow the federal-enclave model that Congress expressly

specified in Section 1333(a)(1). See *Shell Oil*, 488 U.S. at 26 ("[r]eading the statutory provisions" in Section 1333(a)(2)(A) "in the context of the entire section in which they appear") (emphasis omitted). Just as state law applies in federal enclaves only to fill gaps in federal law, see *McGlinn*, 114 U.S. at 547, so too state law is "applicable" on the OCS only to "supplement[] gaps in the federal law," *Rodrigue*, 395 U.S. at 357.

Congress's adoption of state law to fill gaps in federal law on the OCS—*i.e.*, when it is "fit, suitable, or right to be applied," *Webster's Second* 131, or "appropriate," *Ransom*, 562 U.S. at 69-70, for that purpose—also follows from its longstanding practice of assimilating state criminal law to "fill in gaps" in federal law on federal enclaves. *Williams* v. *United States*, 327 U.S. 711, 719 (1946). Beginning in 1825, Congress enacted a series of Assimilative Crimes Acts that "made applicable to enclaves the criminal laws in force in the respective States," but did not incorporate crimes "punishable by any enactment of Congress." *United States* v. *Sharpnack*, 355 U.S. 286, 291, 293 (1958); see 18 U.S.C. 13(a). Those statutes thus "borrow[ed] state law to fill gaps in the federal criminal law," but not where "there [wa]s no gap to fill." *Lewis* v. *United States*, 523 U.S. 155, 160, 163 (1998). Given Congress's adoption of the federal-enclave model in OCSLA, its longstanding practice of making state criminal law "applicable on federal enclaves" only to "fill gaps" in federal law, strongly indicates that Section 1333(a)(2) similarly makes state law "applicable" on the OCS only to "fill in gaps" in federal law. *Id.* at 159.

Congress's subsequent treatment of Section 1333(a)(2) further reinforces the connection between OCSLA and the Assimilative Crimes Act. OCSLA initially provided

for incorporation of state law only as of the effective date of OCSLA's enactment, because Congress believed prospective incorporation of state laws might be an unconstitutional delegation of legislative authority. See Senate Report 33. After this Court held that the Assimilative Crimes Act could fill gaps in federal law by prospectively incorporating state law, *Sharpnack*, 355 U.S. at 294, Congress amended Section 1333(a)(2) to adopt "applicable" state law then in effect or later enacted, Deepwater Port Act of 1974, Pub. L. No. 93-627 § 19(f), 88 Stat. 2146; see S. Rep. No. 1217, 93d Cong., 2d Sess. 60, 76 (1974). That conscious decision to link state law made "applicable" on the OCS through OCSLA to state criminal law made applicable on federal enclaves through the Assimilative Crimes Act further underscores that state law in both statutes is "applicable" only to "fill gaps in" federal law. *Lewis*, 523 U.S. at 160; *Gulf Offshore*, 453 U.S. at 479 n.7.

b. The legislative history and purpose of OCSLA further indicate that state law is "applicable" under Section 1333(a)(2) only to fill gaps in federal law. "In introducing the bill to the Senate," Acting Interior Committee Chairman Cordon explained that OCSLA created a "legal situation [that] is comparable to that in" federal enclaves. *Rodrigue*, 395 U.S. at 361-362 (quoting 99 Cong. Rec. 6963 (1953)).[2] Consistent with that understanding, the Senate Committee Report summarized the "body of law * * * extended to the" OCS by Section 1333(a) as "consisting of: (*a*) The Constitution and the laws * * * of the Federal Government; (*b*) the

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[2] As one commentator has explained, "Senator Cordon's superior knowledge of the structure and details of the bill * * * made him an important figure" in enacting OCSLA. Christopher 32.

regulations, rules, and operating orders of the Secretary of the Interior; and (c) "*in the absence of such applicable Federal law* or adequate Secretarial regulation, the civil and criminal laws of the State adjacent to the" OCS. Senate Report 2 (emphasis added). Likewise, Senator Anderson, a member of the Conference Committee, explained that Section 1333(a) "provides that Federal laws and regulations shall be applicable in the [OCS], but that *where there is a void*, the State law may be *applicable*." *Rodrigue*, 395 U.S. at 358 (quoting 99 Cong. Rec. 7164 (1953)) (emphases added). And Senator Daniel explained that OCSLA "applied State laws in the fields which *are not covered by Federal laws* or by regulations of the Secretary of the Interior." 99 Cong. Rec. 7264 (1953) (emphasis added).[3]

Opponents of OCSLA "realized full well that state law was being used only to supplement federal law," and "introduced an amendment to the Act which would have made 'the laws of such State applicable to the newly acquired area, and * * * the officials of such State [empowered] to enforce the laws of the State in the newly acquired area.'" *Rodrigue*, 395 U.S. at 358-359 (citing 99 Cong. Rec. 7232-7236). But Congress expressly "rejected" that proposal. *Id.* at 359. Congress likewise rejected the approach of the House bill, under which state laws would have been made "applicable" of their own force on the OCS "[e]xcept to the extent that they are inconsistent with applicable Federal laws." H.R. Rep.

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[3] "Particular weight also attaches to the comments of Senator Clinton Anderson * * * , who was the informal leader of the Committee Democratic minority, and of Senator Price Daniel [of Texas], who represented a state having a great stake in the controversy." Christopher 32.

No. 413, 83d Cong., 1st Sess. 9 (1953). Congress's decision to replace that approach with the federal-enclave model, see Christopher 41, underscores that federal law applies exclusively on the OCS (as on federal enclaves), with state laws incorporated as federal law only "to the extent" they are "applicable"—*i.e.*, suitable or appropriate—to fill gaps, 43 U.S.C. 1333(a)(2)(A).[4]

c. This Court's precedents interpreting OCSLA further reinforce that conclusion.

This Court first interpreted OCSLA's choice-of-law provision in *Rodrigue*. The Court there considered whether wrongful-death suits brought by the families of men killed on OCS drilling rigs off the coast of Louisiana should proceed under federal admiralty law or a state wrongful-death statute. See 395 U.S. at 352-353. The Court explained that Congress enacted OCSLA to provide a single "body of law applicable to the" OCS, and that "this law was to be federal law of the United States, applying state law only as federal law and then only when not inconsistent with applicable federal law." *Id.* at 355-356. Relying on "the language of the Act," the Court further explained that "federal law, because of its limited function in a federal system, might be inadequate to cope with the full range of potential legal problems," so "the Act *supplemented gaps in the federal law* with state law through the 'adoption of State law as the law of the United States.'" *Id.* at 356-357

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[4] To be sure, some statements in the legislative history can be read to support the position adopted below. See, *e.g.*, Pet. App. 25-26; H.R. Conf. Rep. No. 1031, 83d Cong., 1st Sess. 13 (1953). But the repeated congressional emphasis on state law as a means to fill gaps in federal law, along with the rejection of proposals to apply state law directly, indicate that OCSLA envisioned only a secondary role for state law.

(emphasis added). The Court concluded that it was "evident from this that federal law is 'exclusive' in its regulation of this area, and that state law is adopted only as surrogate federal law." *Id.* at 357. Because the Court concluded that federal admiralty law did not apply to the OCS, it adopted the state wrongful-death statute to govern the claim. *Id.* at 366.

Two years later, the Court again interpreted OCSLA's choice-of-law provision in *Huson*. There, the question was whether the federal admiralty doctrine of laches or a state statute of limitations governed a tort action arising from an injury on the OCS. 404 U.S. at 98-99. The Court observed that *Rodrigue* had "clarified the scope of application of federal law and state law under" OCSLA. *Id.* at 101. Specifically, the Court explained that *Rodrigue* concluded that "comprehensive admiralty law remedies" did not apply to the OCS, that "a substantial 'gap' in federal law" therefore exists, and that "the 'gap' must be filled with the applicable body of state law under" Section 1333(a)(2). *Ibid.* After describing state limitations law, the Court explained that OCSLA incorporated state law only "for *filling in the 'gaps'* in federal law." *Id.* at 103-104 (emphasis added). Because Congress's decision not to apply federal admiralty law to the OCS left such a gap, the Court adopted state law as federal law under OCSLA. *Id.* at 105.

The Court again discussed OCSLA's choice-of-law provision in *Gulf Offshore*. There, the question was whether federal courts have exclusive jurisdiction over cases arising under OCSLA. 453 U.S. at 475. In analyzing OCSLA's jurisdictional scheme, the Court explained that "[a]ll law applicable to the [OCS] is federal law, but *to fill the substantial 'gaps'* in the coverage of

federal law, OCSLA borrows the 'applicable and not inconsistent' laws of the adjacent States as surrogate federal law." *Id.* at 480 (emphasis added) (quoting 43 U.S.C. 1333(a)(2)). The Court added that OCSLA incorporated the "law of adjacent States *to fill gaps in federal law*" to "retain exclusive federal control of the administration of the" OCS, while also recognizing "the close, longstanding relationship between the Shelf and the adjacent States." *Id.* at 480 n.7 (emphasis added).[5]

d. Although this Court has not addressed a case in which existing federal law extended to the OCS left no gap, the logic of its decisions leads to the conclusion that state law would not apply under Section 1333(a)(2) in such a scenario. As explained in *Rodrigue*, OCSLA makes federal law "exclusive," with "state law * * * adopted *only* as surrogate federal law." 395 U.S. at 357 (emphasis added).

The Fifth Circuit adopted that reading of OCSLA a half-century ago in *Continental Oil*. The court there applied OCSLA's choice-of-law provision to an action by an OCS drilling platform operator against the owner of an ocean-going vessel that collided with the platform. 417 F.2d at 1032-1033. Unlike the wrongful-death action in *Rodrigue*, which fell outside federal admiralty jurisdiction, the involvement of the ocean-going vessel in the collision brought the claim in *Continental Oil* undisputedly within federal admiralty law. See *id.* at 1035.

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[5] As with the legislative history, some statements in this Court's decisions can be read to support a different interpretation. See, *e.g.*, *Rodrigue*, 395 U.S. at 359 (referring to the potential for "federal law to oust adopted state law"); *id.* at 356-358 (referring to adoption of state law "not inconsistent" with federal law). But the decisions as a whole strongly indicate that state law is applicable as federal law on the OCS only to fill gaps in existing federal law.

The platform owner contended that state law was nevertheless "applicable" under Section 1333(a)(2) because it was relevant to "the subject matter in question." *Ibid.* The Fifth Circuit rejected that position as irreconcilable with the statute. The court explained that Congress's "deliberate choice of federal law, federally administered, requires that 'applicable' be read in terms of necessity—necessity to fill a significant void or gap." *Id.* at 1036 (footnote omitted). The contrary view, under which "applicable" simply meant "applicable to the subject matter in question," would effectively read the word out of the statute by placing "almost 100% [e]mphasis on the 'not inconsistent * * * with federal laws' element of § 1333(a)(2)." *Id.* at 1035. Because the court concluded that there were "no gaps" to fill under federal admiralty law, the court concluded that there was no "necessity" to adopt state law as federal law under OCSLA. *Id.* at 1036.

Over the past 50 years, the Fifth Circuit—the site of the vast majority of OCS energy exploration—has repeatedly reaffirmed the holding of *Continental Oil*. See, *e.g.*, *Tetra Techs., Inc.* v. *Continental Ins. Co.*, 814 F.3d 733, 738 (2016) (per curiam); *LeSassier* v. *Chevron USA, Inc.*, 776 F.2d 506, 509 (1985) (per curiam); *Nations* v. *W. W. Morris*, 483 F.2d 577, 585, cert. denied, 414 U.S. 1071 (1973); see also Bureau of Ocean Energy Management, *Gulf of Mexico OCS Region*, https://www.boem.gov/Gulf-of-Mexico-Region (noting that "about 97% of all OCS oil and gas production" occurs in the Gulf of Mexico). District courts within the Ninth Circuit have likewise uniformly followed the reasoning of *Continental Oil*. See Pet. App. 20 n.13; see also *id.* at 51-52 (district court in this case applying *Continental Oil*).

The decision below appears to be the first to depart from that long-settled understanding of OCSLA.

2. The meaning of "applicable" adopted by respondent and the court below conflicts with OCSLA's text, context, history, and purpose

The court of appeals interpreted "applicable" to mean "pertain[ing] to the subject matter at hand," a definition it said "does not lend itself to the notion that state laws have to fill a gap in federal law to qualify as surrogate federal law." Pet. App. 21. Respondent defends that approach. Cert. Br. 17. Although the Ninth Circuit's reading might be one possible meaning of the word "applicable" in isolation, this Court does not "construe statutory phrases in isolation" but rather "read[s] statutes as a whole." *Samantar* v. *Yousuf*, 560 U.S. 305, 319 (2010) (citation omitted).

In context, respondent's reading of "applicable" to mean "pertain[ing] to the subject matter at hand" gives the word no meaning. Pet. App. 21. Even without the word "applicable," no one would read OCSLA to require incorporation of *irrelevant* state law—*i.e.*, divorce law in a personal-injury action. The limitation proposed by respondent and the Ninth Circuit is thus no limitation, and fails to "give effect to every word of a statute wherever possible." *Leocal* v. *Ashcroft*, 543 U.S. 1, 12 (2004); see *FLRA*, 494 U.S. at 930 (refusing to read the term "applicable laws" as "a pointless tautology").

Reading "applicable" to mean "pertain[ing] to the subject matter at hand," Pet. App. 21, also conflicts with this Court's precedent. In both *Rodrigue* and *Huson*, there was no dispute that the Louisiana law invoked by the respective plaintiffs pertained to the subject matter at hand. The Court nevertheless analyzed at length whether federal admiralty law applied, see *Huson*,

404 U.S. at 100-105; *Rodrigue*, 395 U.S. at 359-366—an inquiry that would have been unnecessary if any state law pertaining to the same subject matter were "applicable" under Section 1333(a)(2)(A).

Finally, the Ninth Circuit's reasoning makes little sense on its own terms. The court of appeals recognized that state law adopted as federal law under OCSLA is "surrogate federal law." Pet. App. 21. But the concept of state law as "surrogate federal law" recognizes that state law takes on the role of federal law only when existing federal law is unavailable to play that role itself. See, *e.g.*, *Webster's Second* 2540 (defining a "surrogate" as a "substitute"). The suggestion that state law could substitute for federal law even if federal law were "applicable" cannot be squared with ordinary language or the principle of federal exclusivity that runs throughout OCSLA. See *Rodrigue*, 395 U.S. at 357. The only meaning of "applicable" that makes sense of OCSLA's text, structure, history, and purpose is the one adopted by the Fifth Circuit a half-century ago and followed without exception until the decision below: State law is "applicable"—that is, suitable or appropriate—on the OCS only to fill a "void or gap" in existing federal law. *Continental Oil*, 417 F.2d at 1036.

3. The FLSA leaves no gap to fill, so California wage-and-hour law is not applicable under OCSLA

Applying that rule to this case, the FLSA is the only law applicable to respondent's claims. There is no dispute that the FLSA is among the "laws * * * of the United States" that are "extended to the" OCS by Section 1333(a)(1). See Pet. App. 27; see also *Rodrigue*, 395 U.S. at 362 (indicating that Congress drafted OCSLA to ensure that "fair-labor standard laws" would extend to the OCS) (citation omitted). And the FLSA

does not leave any "gaps" that would need to be filled by state law acting as "surrogate federal law." *Rodrigue*, 395 U.S. at 357.

As this Court has long explained, the FLSA is a "comprehensive legislative scheme," *United States* v. *Darby*, 312 U.S. 100, 109 (1941), that establishes, *inter alia*, "federal minimum-wage, maximum-hour, and overtime guarantees," *Genesis Healthcare Corp.* v. *Symczyk*, 569 U.S. 66, 69 (2013); see p. 26, *infra*. The FLSA thus addresses respondent's minimum-wage and overtime claims. California wage-and-hour law is therefore not "applicable" within the meaning of Section 1333(a)(2). And because Section 1333(a)(2) adopts state law as federal law only when state law is both "applicable *and* not inconsistent with" existing federal law, 43 U.S.C. 1333(a)(2)(A) (emphasis added), the inapplicability of state law alone means that the Ninth Circuit erred in adopting California wage-and-hour law to resolve respondent's minimum-wage and overtime claims. This Court can reverse on that basis alone.

B. California Wage-and-Hour Law Is "Inconsistent With" Federal Law Under 43 U.S.C. 1333(a)(2)(A)

Even if California wage-and-hour law were "applicable" within the meaning of Section 1333(a)(2)(A), it would not be adopted as federal law under OCSLA because it is "inconsistent with" the FLSA. 43 U.S.C. 1333(a)(2)(A). Contrary to the decision below, the standard for "inconsisten[cy]" set by OCSLA does not mirror ordinary conflict-preemption principles, which govern in deciding whether federal law ousts state law that would otherwise apply of its own force to a matter within the State's jurisdiction. The standard under OCSLA instead concerns whether state law is affirmatively incorporated as federal law in an area of exclusive

federal jurisdiction. Under OCSLA, California wage-and-hour laws cannot be incorporated to impose minimum-wage and overtime requirements different from those Congress specified in the FLSA. Congress has already created one federal law on the issue; OCSLA provides no basis to adopt another. The decision below should be reversed on that basis as well.

1. The meaning of "not inconsistent with" in Section 1333(a)(2)(A) derives from federal-enclave law

Like the term "applicable," the term "not inconsistent" has a general definition—"incompatible; incongruous; inharmonious," *Webster's Second* 1259—that must be understood within the context of OCSLA. And as with the term "applicable," the relevant context is the well-established law of federal enclaves that Congress expressly referenced in Section 1333(a)(1).

As noted above, federal-enclave law allows incorporation of state law only if it preexisted establishment of the enclave, and only if it is not "inconsistent with any law of the United States" or "in conflict with the political character, institutions, and constitution of the [federal] government." *McGlinn*, 114 U.S. at 546-547; see Federal Study, Pt. II, at 159-163. As *McGlinn* suggests, the standard for inconsistency is broader than pure legal conflict. A state law is inconsistent with federal law if there exists "conflicting federal policy." *Paul*, 371 U.S. at 269.

The standard for inconsistency in federal-enclave law has developed primarily through interpretation of the Assimilative Crimes Act and its predecessors, which have long provided for state law to fill gaps in federal criminal law on federal enclaves. See *Lewis*, 523 U.S. at 160-161. Although those Acts have not expressly provided that adopted state laws may not be incorporated

if "inconsistent with" federal law, this Court has long interpreted them to contain such a limitation. See *id.* at 164-165. In *Lewis*, for example, the Court explained that state criminal law may not be assimilated as federal law if it "would interfere with the achievement of a federal policy," if adoption of "state law would effectively rewrite" federally prescribed and "carefully considered" standards, or if "federal statutes reveal an intent to occupy so much of a field as would exclude use of the particular state statute at issue." *Ibid.*

Of particular relevance here, this Court has emphasized that assimilation of state law is inappropriate when Congress has defined a crime with precision. More than 70 years ago in *Williams*, for example, the Court refused to assimilate an Arizona crime because Congress had defined "the precise acts" the defendant committed to constitute a different federal crime. 327 U.S. at 717. The Court reached that result even though federal law did not expressly foreclose Arizona's definition and would not have preempted a state prosecution under the State's ordinary jurisdiction. The Court explained that, in the context of a federal enclave governed exclusively by federal law, Congress's precise definition of a crime "is not to be redefined and enlarged by application" of state law, because such a redefinition would have the impermissible "effect of modifying or repealing existing provisions of the Federal Code." *Id.* at 717-718. The Court reiterated that principle in *Lewis*, explaining that assimilation of state law "may not rewrite distinctions among the forms of criminal behavior that Congress intended to create." 523 U.S. at 165; accord Federal Study, Pt. II, at 132.

Those considerations apply *a fortiori* to OCSLA. Unlike the Assimilative Crimes Act, OCSLA's text expressly includes a "not inconsistent with" standard. 43 U.S.C. 1333(a)(2)(A). Unlike most newly established federal enclaves, moreover, the OCS was never part of a State, so no reliance interests on preexisting state law could have developed. Considerations of state sovereignty likewise play no role on the OCS, because (unlike with many federal enclaves) States have never exercised sovereign control over the land at issue.

To be sure, it may be relatively rare that a state law could be "applicable" in the sense that federal law leaves a gap to fill yet "inconsistent with" other federal law. See *Continental Oil*, 417 F.2d at 1040. But such a scenario is conceivable, so—unlike in respondent's reading—neither term is rendered superfluous. See *id.* at 1037. For example, state law may be "applicable" because federal law does not address a particular issue, but "inconsistent" with federal law because it "interfere[s] with the achievement of a federal policy" on a broader level. *Lewis*, 523 U.S. at 164. Thus, a federal court declined to assimilate on a federal enclave a Virginia criminal law that banned racial integration in "places of public assemblage"—a crime with no counterpart in the federal code—because the law conflicted with federal policy "prohibiting the maintenance of racial segregation." *Air Terminal Servs., Inc.* v. *Rentzel*, 81 F. Supp. 611, 611 (E.D. Va. 1949); see Federal Study, Pt. II, at 135-136 (discussing this case). Federal courts of appeals have similarly declined to assimilate state criminal laws that could be seen as filling gaps in federal criminal law but that would undermine, *inter alia*, "Congress's policy and purpose in establishing" national parks, *Blackburn* v. *United States*, 100 F.3d 1426,

1435 (9th Cir. 1996), or federal policy protecting "Indian hunting and fishing rights," *Cheyenne-Arapaho Tribes of Oklahoma* v. *Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980). Moreover, just as state laws can be "applicable" but "inconsistent," so too state laws can be inapplicable but substantively consistent—for example, a state law that parrots the wage-and-hour standards of the FLSA. 43 U.S.C. 1333(a)(2)(A). By barring adoption of state laws that are *either* not "applicable" *or* "inconsistent with" federal law, OCSLA preserves the primacy of federal law and protects the federal government's paramount interests on the OCS. *Ibid.*

2. The California wage-and-hour law governing respondent's claims is inconsistent with the FLSA

The California wage-and-hour laws that respondent invokes are "inconsistent with" the FLSA under Section 1333(a)(2)(A). The FLSA generally requires employers to pay a minimum hourly wage of $7.25, 29 U.S.C. 206(a)(1), and time-and-a-half at the employer's regular rate for work in excess of 40 hours in a week, 29 U.S.C. 207(a)(1). In addition, Department of Labor regulations provide that "[a]n employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises." 29 C.F.R. 785.23. The California laws that respondent invokes depart from those federal standards. California requires most employers to pay a minimum hourly wage of $12, see Cal. Lab. Code § 1182.12(b) (West Supp. 2019); mandates time-and-a-half pay for "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek," and double pay for "[a]ny work in excess of 12 hours in one day" or "any

work in excess of eight hours on any seventh day of a workweek," Cal. Lab. Code § 510(a) (West 2011); and has been interpreted to require employers in certain industries (including those at issue here) to pay personnel residing on the employer's premises for all hours on call, including those "engaged in personal activities, including sleeping, showering, eating, reading, watching television, and browsing the Internet," *Mendiola* v. *CPS Sec. Solutions, Inc.*, 340 P.3d 355, 361 (Cal. 2015).

To adopt the different wage-and-hour rules prescribed by California "would effectively rewrite" the "carefully considered" standards in the FLSA, *Lewis*, 523 U.S. at 164, thereby "modifying or repealing" the minimum-wage and maximum-hours requirements selected by Congress, *Williams*, 327 U.S. at 718. That is precisely the kind of inconsistency this Court has determined precludes adopting state law under the Assimilative Crimes Act. See *Lewis*, 523 U.S. at 169 (refusing to assimilate state law given "the detailed manner in which the federal" statute "is drafted"); *Williams*, 327 U.S. at 717 (refusing to assimilate state law where Congress has defined "precise acts" constituting a crime).

To be sure, complying with both the FLSA and state law would not be impossible. An employer could do so by following the more demanding requirements. And this Court has held that the FLSA does not bar adherence to a more demanding standard imposed by a different federal statute. See *Powell* v. *United States Cartridge Co.*, 339 U.S. 497, 518-519 (1950) (concluding that the FLSA could be enforced in tandem with the Walsh-Healey Act, 41 U.S.C. 6501 *et seq.*). But the "impossibility" standard this Court applied in reconciling two federal laws enacted by Congress, *ibid.*, is not the standard that governs here, because California law *does not*

become federal law unless a court *first determines* that it is "not inconsistent with" the FLSA. 43 U.S.C. 1333(a)(2)(A).

The appropriate analogy is thus not to this Court's cases attempting to harmonize multiple laws enacted by Congress, but to its cases determining whether to adopt state law as federal law. See *Lewis*, 523 U.S. at 164-165. Closely related are cases in which this Court has determined whether federal statutory law displaces *federal common law* (of which assimilated state law could be considered a variety). See, *e.g.*, *American Elec. Power Co.* v. *Connecticut*, 564 U.S. 410, 423-424 (2011). In those cases, the Court has refused to apply federal common law if a federal statute "speaks directly to the question at issue." *Id.* at 424 (brackets, citation, and internal quotation marks omitted). Here, the FLSA speaks directly to the question at issue by prescribing particular minimum-wage, overtime, and maximum-hours requirements. No basis exists to nullify those carefully specified requirements by elevating different requirements to the status of federal law and then displacing the choices made by Congress with choices made by California.

3. The court of appeals' holding that California law is "not inconsistent with" the FLSA is mistaken

In determining that California wage-and-hour law is "not inconsistent with" the FLSA, the Ninth Circuit relied heavily on the FLSA's savings clause, which "expressly provides that states are free to adopt more protective standards for minimum wages or maximum hours in a work week." Pet. App. 36. That reasoning is flawed. The FLSA savings clause provides only that *the FLSA itself* does not bar enforcement of more protective wage-and-hour standards. See 29 U.S.C. 218(a)

("No provision of *this chapter* * * * shall excuse noncompliance" with "higher" minimum-wage or "lower" maximum-hours laws.) (emphasis added). The FLSA does not, however, assimilate state law prescribing more protective wage-and-hour standards than federal law or provide for enforcement of such standards by the Department of Labor or private plaintiffs. See, *e.g.*, *Ervin* v. *OS Rest. Servs., Inc.*, 632 F.3d 971, 977 (7th Cir. 2011). The presence of the FLSA savings clause thus does not affect the conclusion that California wage-and-hour law is inconsistent with the substantive wage-and-hour provisions of the FLSA. Indeed, the savings clause is, by definition, implicated only when there is some measure of inconsistency between the FLSA and another law. See 29 U.S.C. 218(a) (referring to a "higher" minimum wage or a "lower" maximum workweek).

The Ninth Circuit's contrary position would effectively adopt principles from one species of conflict preemption—*i.e.*, that state law is "impliedly preempted where it is 'impossible for a private party to comply with both state and federal requirements'"—as the governing rule on the OCS. *Mutual Pharm. Co.* v. *Bartlett*, 570 U.S. 472, 480 (2013) (citation omitted). But that is a fundamental principle that applies to all juridictions. The Ninth Circuit's position thus disregards OCSLA's extension of federal law to the OCS "to the same extent as if the [OCS] were an area of exclusive Federal jurisdiction located within a State" (*i.e.*, a federal enclave). 43 U.S.C. 1333(a)(1). Indeed, the court's position would largely adopt a legal regime that Congress expressly rejected when it declined to pass "an amendment to the Act which would have made 'the laws of such State applicable to the newly acquired area'" as a general matter. *Rodrigue*, 395 U.S. at 359 (citation

omitted). That is not a permissible reading of the statute. See *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 442-443 (1987) ("Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded.") (citation omitted).

More fundamentally, the Ninth Circuit's position would extend impossibility-preemption principles "derived" from the Supremacy Clause, *Bartlett*, 570 U.S. at 480 (citation omitted), to a setting in which the Supremacy Clause has no role to play. Because OCSLA incorporates state law only as "the law of the United States," 43 U.S.C. 1333(a)(2)(A), there is no possible conflict between state law as such and federal law, and therefore no basis for the Supremacy Clause to supply the rule of decision.

C. The Decision Below Would Disrupt Settled Expectations And Orderly Administration On The OCS

The decision below would disrupt long-settled expectations on the OCS. As the Ninth Circuit recognized, its reading of OCSLA departs from the Fifth Circuit's in *Continental Oil*, which provided the governing standard in OCS cases for a half-century. Pet. App. 20 n.13. Affirming the Ninth Circuit's novel construction would dramatically alter business arrangements on the OCS. California's rule that employers must pay employees for all hours spent on the drilling platform would appear to require employers to more than double their labor costs, cut their workers' wages, or adjust their employment structures, for example by requiring employees to return to the mainland every night. Additional applications of California wage-and-hour law could have other unpredictable effects. And the Ninth Circuit left open the possibility of retroactive liability as well. See *id.* at 43.

Adopting state wage-and-hour law as federal law on the OCS would also create new administrative burdens.

Because all OCS law must be "administered and enforced by the appropriate officers and courts of the United States," 43 U.S.C. 1333(a)(2)(A), federal officials, presumably in the Department of Labor, would have to learn and apply a multiplicity of unfamiliar state requirements over and above the provisions of the FLSA that those officials have long enforced. Many of those additional state requirements are complex and depend on judicial or administrative constructions of state law. See *Mendiola*, 340 P.3d at 361. Imposing such responsibilities on federal officials would be especially anomalous given OCSLA's overriding focus on the exclusivity of federal "jurisdiction, control, and power of disposition." 43 U.S.C. 1332(1).

The Ninth Circuit's decision could have implications well beyond the wage-and-hour laws at issue here. Numerous federal statutes, administered by various federal agencies, specify regulatory standards affecting the OCS. The Department of Labor, for example, administers multiple statutes that apply on the OCS, including the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*; the Service Contract Act of 1965, 41 U.S.C. 6701 *et seq.*; and the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 *et seq.* The Coast Guard administers comprehensive safety regulations for the OCS. See 43 U.S.C. 1347; 33 C.F.R. Ch. I, Subch. N. The Environmental Protection Agency administers the Clean Air Act, 42 U.S.C. 7401 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, for portions of the OCS. And the Department of the Interior administers numerous

statutes and programs related to energy and mineral exploration, development, and production on the OCS. See 30 C.F.R. Chs. II and V.[6]

Many of those statutes expressly provide that they apply to, or limit state jurisdiction on, the OCS, which makes especially clear that Congress intended those federal regulatory regimes and not state law to govern. But some of those statutes also have general provisions that resemble the FLSA's savings clause. See, *e.g.*, 42 U.S.C. 7416. If this Court were to affirm the Ninth Circuit's decision, courts could be urged to conclude (erroneously, in the government's view) that such general savings clauses likewise require adoption of state regulatory law as federal law on the OCS. That would result in more chaotic regulatory regimes, heavier federal administrative burdens, and more significant interference with statutorily mandated policy objectives. More fundamentally, the widespread adoption of state law on the OCS would undermine the textually demonstrated and long-understood principle that OCSLA "emphatically" asserts the federal government's "paramount" sovereignty over the OCS. *Maine*, 420 U.S. at 526. Confining state law to its important but secondary role to "supplement[] gaps in the federal law" on the OCS, by contrast, is consistent with the text, history, and purpose of OCSLA, as well as this Court's longstanding precedent interpreting it. *Rodrigue*, 395 U.S. at 357.

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[6] The Department of the Interior, rather than EPA, regulates air pollutant emissions for portions of the OCS in the Gulf of Mexico and the Arctic Ocean. 42 U.S.C. 7627(a).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

1. 43 U.S.C. 1332 provides:

Congressional declaration of policy

It is hereby declared to be the policy of the United States that—

(1) the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter;

(2) this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected;

(3) the outer Continental Shelf is a vital national resource reserve held by the Federal Government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs;

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and noncoastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments—

(A) such States and their affected local governments may require assistance in protecting their coastal zones and other affected areas from

any temporary or permanent adverse effects of such impacts;

(B) the distribution of a portion of the receipts from the leasing of mineral resources of the outer Continental Shelf adjacent to State lands, as provided under section 1337(g) of this title, will provide affected coastal States and localities with funds which may be used for the mitigation of adverse economic and environmental effects related to the development of such resources; and

(C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf.[1]

(5) the rights and responsibilities of all States and, where appropriate, local governments, to preserve and protect their marine, human, and coastal environments through such means as regulation of land, air, and water uses, of safety, and of related development and activity should be considered and recognized; and

(6) operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and tech-

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[1] So in original. The period probably should be a semicolon.

niques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health.

2. 43 U.S.C. 1333 provides:

Laws and regulations governing lands

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however,* That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other

Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting[1] any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

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[1] So in original. Probably should be "settling".

(b) Longshore and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be payable under the provisions of the Longshore and Harbor Workers' Compensation Act [33 U.S.C. 901 et seq.]. For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon

any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the State nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

3. 18 U.S.C. 13(a) provides:

Laws of States adopted for areas within Federal jurisdiction

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situ-

ated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

4. 29 U.S.C. 206(a)(1) provides:

Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than—

(A) $5.85 an hour, beginning on the 60th day after May 25, 2007;

(B) $6.55 an hour, beginning 12 months after that 60th day; and

(C) $7.25 an hour, beginning 24 months after that 60th day;

5. 29 U.S.C. 207(a)(1)

Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

6. 29 U.S.C. 218(a) provides:

Relation to other laws

(a) No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum work week lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage

paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

7. 29 C.F.R. 785.23 provides:

Employees residing on employer's premises or working at home.

An employee who resides on his employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he is on the premises. Ordinarily, he may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he may leave the premises for purposes of his own. It is, of course, difficult to determine the exact hours worked under these circumstances and any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted. This rule would apply, for example, to the pumper of a stripper well who resides on the premises of his employer and also to a telephone operator who has the switchboard in her own home.